

Memorandum

To : Honorable John Chiang, Chair
Honorable, Claude Parrish, Vice Chairman
Honorable Betty T. Yee, Acting Board Member
Honorable Bill Leonard
Honorable Steve Westly

Date : April 14, 2006

From : Kristine Cazadd
Chief Counsel



Subject : **Board Meeting – April 18, 2006**
Item L1, Proposed Revision for Form BOE-1238-AID
Verified Petition for Release or Recovery of Property
Alternative Proposed Revision

By memorandum dated April 11, 2006, I submitted for the Board's consideration a proposed revision to Form BOE 1238-AID developed by staff in response to concerns raised by Board Member Bill Leonard at the Board Hearing held in Culver City on March 8, 2006. Board Member Bill Leonard expressed concern that taxpayers are not aware of the fact that the Board of Equalization is without statutory legal authority to return counterfeit stamped cigarettes to taxpayers unless the seizure was erroneous or illegal. Board Member Leonard requested that, at the time the taxpayer receives notification of his/her appeal rights, the taxpayer should be informed of these facts and their required burden of proof.

The proposed revision submitted with my April 11, 2006, memorandum includes a listing of cigarette and tobacco products that can be seized and forfeited under current statutes, and a proposed statement of notification is added to the form that declares property can only be released if the seizure was erroneous or illegal. The statement reads as follows:

Documentation or argument in support of your ownership interest in the seized property must be submitted with this petition in order to establish that the seizure was erroneous or illegal; such documentation includes but is not limited to:

- **For counterfeit stamped cigarettes, certification that seized cigarettes were affixed with valid California Stamps.**
- **For unstamped cigarettes or cigarettes affixed with stamps from states other than California, certification that there was either a valid California stamp affixed, cigarettes were not held for resale, or that the cigarettes were, at the time of seizure, located at a facility that was properly licensed with the Board of Equalization as a cigarette distributor.**

- **Copy of the Attorney General's website showing cigarettes listed at time of seizure (Master Settlement Agreement).**
- **For untaxed tobacco products, documents establishing that tobacco products tax was in fact paid, not held for resale, or that the tobacco products were, at the time of seizure, located at a facility that was properly licensed with the Board of Equalization as a tobacco products distributor.**

"Pursuant to Revenue and Taxation Code 30438, seized property can only be released if the grounds for the petition are that the seizures were erroneous or illegal."

Subsequent to my April 11, 2006, memorandum, Board Member Bill Leonard submitted an alternative (revised) version of Form BOE 1238-AID to staff. Board Member Bill Leonard's alternative version simplifies and clarifies the language of the newly added proposed statement of notification (set forth above) for easier comprehension by taxpayers. The alternative revised version reads as follows:

The Board of Equalization is not legally permitted to return seized cigarettes or tobacco products unless they were erroneously or illegally seized. Under Revenue and Taxation Code 30438, you must explain on this form why you believe your cigarettes or tobacco products were erroneously or illegally seized.

The following examples apply to many common situations:

- **If you were told that your seized cigarettes had counterfeit tax stamps, then you will need to explain or provide evidence that they had valid California tax stamps in order to get them back.**
- **If you were told that your cigarettes were unstamped or had stamps from other states, then you will need to explain or provide evidence that they had valid California tax stamps, or that they were located at a licensed cigarette distributor's facility at the time they were seized.**
- **If you were told that your cigarettes were illegal in California because they were not listed in the Master Settlement Agreement, then you will need to provide evidence that they were listed, such as a copy of the listing from the California Attorney General's California Tobacco Directory website.**
- **For tobacco products other than cigarettes, you will need to prove that the tax was paid or that the tobacco products were located at a licensed tobacco distributor's facility at the time they were seized.**

Explanation (Please attach additional pages if needed)

Attached is a draft of the alternative version to Form BOE 1238-AID, *Verified Petition for Release and Recovery of Property*, submitted to staff by Board Member Bill Leonard, which staff has reviewed and approved as an alternative revision.


If you have any questions or would like further information, please feel free to contact me at (916) 445-4380.

KC:

Attachment

cc: Mr. Ramon J. Hirsig
Mr. David Gau
Ms. Jean Ogrod
Mr. Gil Haas, Jr.
Mr. Jefferson D. Vest
Mr. Robert Lambert
Mr. David McKillip

Approved:


Ramon J. Hirsig
Executive Director

**VERIFIED PETITION FOR RELEASE OR RECOVERY OF PROPERTY
(UNDER REVENUE AND TAXATION CODE SECTION 30438)**

This petition must be filed within 20 days from the date of personal service or the date of the mailing of the Notice of Seizure and Forfeiture. If you were not served personally or by mail, the petition must be filed within 20 days from the date of publication of the Notice of Seizure and Forfeiture. You must file this petition with the Chief, Board Proceedings Division, State Board of Equalization, 450 N Street, MIC:81, P.O. Box 942879, Sacramento, CA 94279-0081.

If you do not timely file a verified petition, it will result in the property being forfeited to the State of California without further notice or hearing.

I, _____, hereby file this petition to state an interest in the
(name)

property described as: _____

which was seized on _____ at _____,
(date) (address where property was seized)

under section ☐ 30436 of the Revenue and Taxation Code
☐ 22974.3 of the Business and Professions Code
☐ 22978.2 of the Business and Professions Code.

The Board of Equalization is not legally permitted to return seized cigarettes or tobacco products unless they were erroneously or illegally seized. Under Revenue and Taxation Code 30438, you must explain on this form why you believe your cigarettes or tobacco products were erroneously or illegally seized.

The following examples apply to many common situations:

- If you were told that your seized cigarettes had counterfeit tax stamps, then you will need to explain or provide evidence that they had valid California tax stamps in order to get them back.
- If you were told that your cigarettes were unstamped or had stamps from other states, then you will need to explain or provide evidence that they had valid California tax stamps, or that they were located at a licensed cigarette distributor's facility at the time they were seized.
- If you were told that your cigarettes were illegal in California because they were not listed in the Master Settlement Agreement, then you will need to provide evidence that they were listed, such as a copy of the listing from the California Attorney General's California Tobacco Directory website.
- For tobacco products other than cigarettes, you will need to prove that the tax was paid or that the tobacco products were located at a licensed tobacco distributor's facility at the time they were seized.

Explanation (Please attach additional pages if needed)

VERIFICATION

I am the Petitioner, or I am authorized to act on behalf of the Petitioner, in this proceeding and I have read and understand this petition. I declare, under penalty of perjury under the laws of the State of California, that the information contained in this petition is true and correct to the best of my knowledge.

SIGNATURE (capacity in which signed for petitioner)	DATE
PETITIONER'S NAME	ACCOUNT NUMBER
PETITIONER'S ADDRESS (street, city, state, zip code)	TELEPHONE NUMBER ()

Check one: ☐ Individual ☐ Partnership ☐ Corporation ☐ Other (specify)

My interest in the seized property is as follows:

☐ Owner ☐ Security or Lien ☐ Personal Representative of the Estate of the Owner

☐ Lessee or Secured Party ☐ Other (specify)

ATTORNEY'S NAME (if represented)

ATTORNEY'S ADDRESS (street, city, state, zip code)	TELEPHONE NUMBER ()
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